

The seal of the University of Cambridge, featuring a shield with a cross and four lions, surrounded by the text 'UNIVERSITY OF CAMBRIDGE' and 'FOUNDED 1209'.

No. 10-2407 DH

On December 30, 2010, the Department of Health and Senior Services, Bureau of Child Care (“the Department”) filed a complaint seeking to discipline Bond. After several attempts to serve Bond, on April 18, 2012, she was personally served with a copy of the complaint, our notice of complaint/notice of hearing, and order dated April 3, 2012.

On August 24, 2012, we held a hearing on the complaint. Joi N. Cunningham represented the Department. Bond represented herself. The matter became ready for our decision on November 5, 2012, the date Bond's written argument was due.

Findings of Fact

1. Bond, d/b/a Kreative Kids Daycare, was licensed to operate a child care home located at 8232 Canyon Drive, St. Louis, Missouri ("Canyon Drive Home"). Her most recent license was issued on May 1, 2009 and expired on April 30, 2011.

2. Bond was licensed to provide care for up to ten children between the ages of six weeks to twelve years. By regulation and the terms of the license, the following conditions were applicable to the license:

- Ten children in care – no more than four children under two years of age with two adult caregivers;
- Six children in care – no more than three children under two years of age with one adult caregiver;
- Seven to ten children in care – no more than two children under two years of age with one adult caregiver;
- Eight children in care – all of whom may all be under two years of age with two adult caregivers.

3. Bond was licensed to provide 24-hour care, Sunday through Saturday.

4. Bond's business was a "child-care facility."¹

5. Bond was never licensed to care for children at 5551 Winchelsea Drive, Normandy, Missouri ("Winchelsea Home").

¹ As defined in § 210.201(2). Statutory references, unless otherwise noted are to the 2012 Supplement to the Revised Statutes of Missouri.

6. On September 10, 2010, the Department sent a letter to Bond notifying her of the Department's intent to discipline her child care license for violating the Department's regulations.

7. On October 4, 2010, the Department received Bond's request for a hearing appealing the decision.

I. Count I – Providing Care Unlicensed at an Unlicensed Facility

8. On October 16, 2009, the Department of Social Services ("DSS") conducted an audit on Bond's licensed child care home. Bond had a contract with the DSS Child Care Subsidy Program to provide child care services for authorized families. The contract was specific to the Canyon Drive Home, and required Bond to maintain her child care license with the Department.

9. During the audit, DSS discovered that Bond submitted documentation for payment authorization for 55 children when Bond is only licensed to care for ten children.

10. On May 6, 2010, DSS informed the Department of the findings from the audit. While the audit did not show that 55 children were cared for at the same time, it triggered an investigation.

11. On May 20, 2010, the Department received a complaint alleging that Bond was caring for children at the Winchelsea Home, and that a child in care at that address, born October 10, 2006, had been inappropriately disciplined.²

12. On May 20, 2010, Michelle Truesdale, with the Department, and Donna Sheffer, with DSS, visited the Winchelsea Home to investigate the allegations in the complaint. When Truesdale arrived at the Winchelsea Home, she saw Bond driving away in a car.

² The allegation of improper discipline was also investigated by DSS as an abuse/neglect complaint. We address only the allegation of improper discipline.

13. The Winchelsea Home is a two-bedroom, single-story home, with no basement. There were no markings or indications outside the house that child care was being provided inside.

14. When Truesdale knocked on the door, it was answered by a young woman, but she would not allow them inside. Sheffer contacted the Normandy Police Department. When the police arrived, they were allowed to enter the home.

15. There were 25 children in care at the Winchelsea Home, including 10 children under two years of age, with two adults – Constance Hayes and Marteika Moore.

16. The Winchelsea Home was set up more like a day care center than a residential home, with shelves, equipment, play mats, and small tables and chairs.

17. Bond arrived at the Winchelsea Home and provided the Department and DSS with an attendance sheet of the children receiving child care at the Winchelsea Home. The names listed on the enrollment sheets were the same names that appeared on the enrollment sheets at Bond's licensed child care facility, the Canyon Drive Home.

18. Bond billed DSS for serving children under the license issued to the Canyon Drive Home when the children were actually being served at the Winchelsea Home.

19. The Department had no application or other indication from Bond that she intended to move her child care facility to the Winchelsea Home, despite her claim that she was in the process of doing so.

20. Child care licenses are not transferable. The Department must receive a new application for any change of address because the new building must pass fire and sanitation inspections.

21. At no time has the Department licensed the operation of a child care facility at 5551 Winchelsea, in Normandy, Missouri, by Bond or anyone else.

22. From December 2007 until June 2010, the address at 5551 Winchelsea, Normandy, Missouri, received utility services from Ameren UE in the name of Dennis Bond, Ms. Bond's spouse.

23. At the time of the investigation, Bond had been providing child care services at the Winchelsea Home for approximately two years.

II. Count II – Failure to Use Appropriate Discipline

24. On May 20, 2010, while at the Winchelsea Home, Dominique Wallace, acting as Bond's assistant, held a three-year-old child's arms behind his back and threatened to handcuff him like the police as punishment for throwing blocks at another child. The child was crying as this was happening.

III. Count III – Failure to Maintain Occupancy Limitations

25. Based on the available floor space of the Winchelsea Home, Bond could have been licensed to care for a total of 15 children there, including related children.

26. A review of Bond's licensing record and a review of attendance sheets submitted to the Department for the months of July 2009 and May 2010 revealed that Bond exceeded her total usable child care space capacity on a regular basis.

27. During an inspection of the Winchelsea Home on May 24, 2010, there were 16 children present.

IV. Count IV – Exceeding License Limitations

28. Bond is licensed to care for a maximum of four children under the age of two years old at the Canyon Drive Home.

29. A review of attendance sheets submitted for the months of July 2009 and May 2010 revealed that in July 2009, Bond violated this license limitation by caring for at least five

children under the age of two on a daily basis at the Winchelsea Home. In addition, Bond exceeded her licensed capacity of ten children in July 2009 and May 2010.

30. On July 22, 2009, Bond was paid by DSS for daytime care for 40 children. On May 20, 2010, she was paid by DSS for daytime care for 25 children.

31. On May 20, 2010, there were 25 children (six related children and 19 children not related to Bond) in Bond's care at the unlicensed Winchelsea Home. Of the 19 unrelated children, nine children were under the age of two years. These children were being cared for by two individuals who had not been approved by the Department.

32. On May 24, 2010, there were 16 children in Bond's care, including five infant/toddlers and six pre-school-aged children who were not related to Bond.

V. Count V – Failure to Use Approved Staff

33. On May 10, 2010, Pamela Carpenter was providing care to children at the Winchelsea Home as the agent or employee of Bond.

34. At that time, the Department had not approved Pamela Carpenter as an "approved assistant."

35. On May 20, 2010, Marteika Moore and Constance Hayes were providing care to children at the Winchelsea Home as the agents or employees of Bond.

36. At that time, the Department had not approved Marteika Moore or Constance Hayes as "approved assistants."

Conclusions of Law

The Department filed a complaint pursuant to § 210.245, which states:

2. If the department of health and senior services proposes to deny, suspend, place on probation or revoke a license, the department of health and senior services shall serve upon the applicant or licensee written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it,

the date the action will become effective, and a statement that the applicant or licensee shall have thirty days to request in writing a hearing before the administrative hearing commission and that such request shall be made to the department of health and senior services. If no written request for a hearing is received by the department of health and senior services within thirty days of the delivery or mailing by certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect on the thirty-first day after such delivery or mailing of the notice to the applicant or licensee. If the applicant or licensee makes a written request for a hearing, the department of health and senior services shall file a complaint with the administrative hearing commission within ninety days of receipt of the request for a hearing.

This statute gives us jurisdiction to hear this case. The Department has the burden of proof by a preponderance of the evidence.³

The Department is responsible for licensing and inspecting child care facilities, and superintending their compliance with the law and regulations. Section 210.221⁴ states:

1. The department of health shall have the following powers and duties:

(1) After inspection, to grant licenses to persons to operate child-care facilities if satisfied as to the good character and intent of the applicant and that such applicant is qualified and equipped to render care or service conducive to the welfare of children, and to renew the same when expired. No license shall be granted for a term exceeding two years. Each license shall specify the kind of child-care services the licensee is authorized to perform, the number of children that can be received or maintained, and their ages and sex;

(2) To inspect the conditions of the homes and other places in which the applicant operates a child-care facility, inspect their books and records, premises and children being served, examine their officers and agents, deny, suspend, place on probation or revoke the license of such persons as fail to obey the provisions of sections 210.201 to 210.245 or the rules and regulations made by the department of health. The director may also revoke or suspend a license when the licensee fails to renew or surrenders the license;

³ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁴ RSMo 2000.

(3) To promulgate and issue rules and regulations the department deems necessary or proper in order to establish standards of service and care to be rendered by such licensees to children. No rule or regulation promulgated by the division shall in any manner restrict or interfere with any religious instruction, philosophies or ministries provided by the facility and shall not apply to facilities operated by religious organizations which are not required to be licensed; and

(4) To determine what records shall be kept by such persons and the form thereof, and the methods to be used in keeping such records, and to require reports to be made to the department at regular intervals.

The Department claims there is cause for discipline because Bond violated the following regulations.

I. Count I – Providing Care at an Unlicensed Facility

A. Compliance with Licensing Rules

Regulation 19 CSR 30-61.025(3)⁵ states:

The person(s) operating a family day care home shall be responsible for meeting all debts and obligations incurred by the facility and for maintaining compliance with all licensing rules for family day care homes.

As set forth below, Bond failed to maintain compliance with licensing rules. She violated this regulation.

B. Good Character

Regulation 19 CSR 30-61.105(1)(D) states: “Caregivers shall be of good character and intent and shall be qualified to provide care conducive to the welfare of children.” Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997).

⁵ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Bond admitted she operated an unlicensed child care facility for two years. She cared for more children than her license and space allowed. More troubling, she allowed assistants who had not been approved by the Department to care for the children in a home that had not been inspected as required by the Department for important fire and safety concerns, in clear violation of the terms of her license. At the hearing, Bond asserted that the Winchelsea Home had been a day care facility in the past, but presented no other evidence of this. Even if she had, it does not diminish the fact that the Winchelsea Home had not been inspected or licensed as a child care facility when Bond was operating it as such. Because of her disregard of the law, we find Bond lacked good character and violated this regulation.

C. License Transferable

Regulation 19 CSR 30-61.045(3)(Q) states:

The license shall not be transferable and shall apply only to the person(s) and address shown on the license.

This is not a regulation setting forth conduct that is required or prohibited; it is an absolute statement that a license shall apply only to the person and address shown on that license. Bond's license allowed her to operate only from the Canyon Drive Home. By operating from the Winchelsea Home, Bond attempted to transfer her license to a location not approved by the Department. We find she violated this regulation.

D. Areas Not Approved for Child Care

Regulation 19 CSR 30-61.085(1)(E) states: "Children shall have no access to areas not approved for child care." The Winchelsea Home was not approved for child care. Bond violated this regulation.

II. Count II – Failure to Use Appropriate Discipline

Pursuant to 19 CSR 30-61.175(1)(C)3:

Only constructive, age-appropriate methods of discipline shall be used to help children develop self-control and assume responsibility for their own actions.

Regulation 19 CSR 30-61.175(1)(C)8 states:

No discipline technique which is humiliating, threatening or frightening to children shall be used. Children shall not be shamed, ridiculed, or spoken to harshly, abusively or with profanity.

On May 20, 2010, Wallace held a three-year-old child's arms behind his back and threatened to handcuff him like the police as punishment for throwing blocks at another child. The child was crying as this was happening.

Truesdale testified that Wallace's method of discipline was more threatening than constructive:

Q: Constructive is kind of a squishy, subjective word. What about the details made you feel it was not constructive?

A: Instead of perhaps talking more about, you know, hurting someone else's feelings, his brother, by throwing the item at him, she opted to frighten the boy really by threatening to call the police on him and even making the motions as if she was going to handcuff him.

Q: Was there anything else about the details about that that you learned that you took into account?

A: Well, he was crying at the time, too, so it would appear that he was, at minimum upset, but most probably frightened as well.

Q: How old was the child?

A: Three years old.

Q: And then the last one you cite here is no discipline technique which is humiliating, threatening or frightening to children shall be

used; children shall not be shamed, ridiculed, spoken harshly to, abusively or with profanity. Again, what was your reasoning?

A: The technique that she used, again, I considered it threatening and frightening to the child.^[6]

While Truesdale was not presented as an expert witness, we agree with her assessment that the discipline imposed by Wallace violated the regulations.

III. Count III – Failure to Maintain Occupancy Limitations

Regulation 19 CSR 30-61.085(2)(B)l states:

At least thirty-five (35) square feet of usable floor space shall be provided for each child coming into the home for day care.

Regulation 19 CSR 30-61.010 defines the terms used in the Department’s licensing rules for family day care homes. A “home” or “family day care home” is defined as:

a child care program where care is given by a person licensed as a family day care home provider for no more than ten (10) children not related to the provider for any part of the twenty-four (24)-hour day. The provider may be licensed to operate no more than one (1) family day care home or group day care home.^[7]

Bond was a licensed family day care home provider, but was operating from the Winchelsea Home, a location not covered by her license. Nevertheless, Bond was bound to comply with the Department’s requirements for the physical space in which child care may be provided. Based on the available floor space at the Winchelsea Home, the Department could have approved for Bond to care for 15 children, including related children, at that location. Bond exceeded this number on a regular basis, thereby violating 19 CSR 30-61.085(2)(B)(l).

⁶ Tr. at 53-54.

⁷ 19 CSR 30-61.010(10).

IV. Count IV – Exceeding License Limitations

Regulation 19 CSR 30-61.105(2)(B) states:

If the provider has an assistant present, the home may be licensed for up to ten (10) children including a maximum of four (4) children under age two (2) or for up to eight (8) children who may all be under age two (2).

Bond cared for more children than her license allowed for on many occasions. She violated this regulation.

V. Count V – Failure to Use Approved Staff

Regulation 19 CSR 30-61.105(3)(A) states:

An approved assistant shall be available. If there is a change of assistants, the provider shall notify the Child Care Licensing Unit immediately.

On May 10 and 24, 2010, an approved assistant was not available because the children were being cared for by individuals who had not been approved by the Department. Bond violated this regulation.

Summary

Bond is subject to discipline under § 210.221.1(2) for violating Department regulations.

SO ORDERED on June 21, 2013.

\s\ Mary E. Nelson

MARY E. NELSON
Commissioner